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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,287	12/31/2003	Jane Frances Heschmeyer	08116.0023.NPUS00	9611
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Steven J. Moore Kelley Drye & Warren LLP Intellectual Property Department 400 Atlantic Street, 13th Floor Stamford, CT 06901-3229				
EXAMINER STULIL, VERA				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/748,287

## Applicant(s)

HESCHMEYER ET AL.

## Examiner

VERA STULII

## Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 14, 15 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 14, 15 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 24, 2008 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 5, 14-15, and 18-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The meaning of the term "pre-cooked" is not clear. It is not clear what exactly is being pre-cooked (i.e. the starch itself, starched mixed with water, mixture of starches, or there is some other interpretation). There appears to be no further description of what this means or what condition one employs to define the "pre-cooked" term. Also, the context of the phrase "pre-cooked" itself is not clear. "Pre"

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means before. It is not clear at what point mixture was pre-cooked. It is also not clear what is the relationship of "pre-cooking" to the actual cooking step to form the wafer.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 5, 14-15, and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear as to how the "pre-cooked" as it exists can contain water at the recited temperature.

The meaning of the term "pre-cooked" is not clear. It is not clear what exactly is being pre-cooked (i.e. the starch itself, starched mixed with water, mixture of starches, or there is some other interpretation). Also, the context of the phrase "pre-cooked" itself is not clear. "Pre" means before. It is not clear at what point mixture was pre-cooked. It is also not clear what is the relationship of "pre-cooking" to the actual cooking step to form the wafer.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1, 5, 14-15, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wernecke (DE 1927394) in view of applicants' prior art admission.

Wernecke discloses a low-gluten bread for low-protein diets. Wernecke also discloses a low gluten bread product that contains maximum 0.3% by weight gluten (Abstract). Wernecke also discloses the bread product comprising wheat starch, pregelatinized wheat starch and water (Abstract). Wernecke discloses that low-gluten bread product is designed for people suffering from Celiac disease (Translation p.1). Wernecke discloses that pregelatinized wheat starch serves as a structure improving component (Translation p.3). Wernecke also discloses baking at a temperature of 400F (Translation p.5).

Claim 1 differs from the Wernecke reference in recitation of only wheat starch, pregelatinized wheat starch and water. However, Applicants admit that the communion wafer is made of wheat and water (Specification page 1). Wernecke discloses low-gluten bread product, where flour is substituted with starches such as wheat starch and pregelatinized wheat starch. As admitted by Applicants, it was well known in the art that traditional communion wafers served during Roman Catholic Communion services are made out of two ingredients, wheat flour (wheat component) and water. Since Wernecke discloses low-gluten bread product for people suffering from Celiac disease by using wheat starch and pregelatinized wheat starch as a wheat component, one of ordinary skill in the art would have been motivated to modify disclosure of Wernecke and to employ wheat starch and pregelatinized wheat starch as a wheat component in preparation of communion wafers. One of ordinary skill in the art would have been

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motivated to do so, since using water and wheat component in preparation of communion wafers was a well established fact in the art. As disclosed, Applicants reasons for using starches is to provide a product which is designed for people suffering from celiac disease. As evidenced by Wernecke it was well known in the art to provide edible food products that have starch substitute for flour to provide low-gluten product for people suffering from celiac disease. Wernecke recognizes the Applicants' problem and solution. Wernecke also discloses production of "very well tasting bread" and use of other ingredients than only wheat starch, pregelatinized wheat starch and water (page 1 of Translation, Abstract). As admitted by Applicants, it was well known in the art that traditional communion wafers served during Roman Catholic Communion services are made out of two ingredients, wheat flour (wheat component) and water. Therefore to produce the communion wafer by using wheat starch ingredients and water, and to eliminate additional ingredients disclosed in Wernecke would have been obvious to one of ordinary skill in the art.

Since Wernecke discloses that pregelatinized wheat starch serves as a structure improving component, one of ordinary skill in the art would have been motivated to vary amounts of starches in the "pre-cooked" mixture depending on the desired properties of the final product.

One of ordinary skill in the art would have been motivated to vary amount of "pre-cooked" depending on the size of the final product desired. One of the ordinary skill in the art would have been motivated to do so since use of wafers of different sizes was a well established fact in the art.

Regarding the water temperature recitation, it is noted that Wernecke does not specifically state the temperature of water added. However, Wernecke discloses production of "homogeneous" mixture prior to baking. One of ordinary skill in the art would have been motivated to modify water temperature in order to produce "homogeneous" starch mixture as taught by Wernecke.

### ***Response to Arguments***

Applicant's arguments filed January 24, 2008 have been fully considered but they are not persuasive.

Applicant's arguments filed January 24, 2008 have been fully considered but they are not persuasive. On page 10 of the Reply to the Office action mailed September 24, 2007, Applicants state that "[i]t is only during production of this mixture that it contains water at this temperature, i.e., water at this temperature is added to the mixture of wheat starch and pre-gelatinized wheat starch". Applicants arguments are not being persuasive. Applicants further state that "[t]his is made clear in the specification on page 5, lines 13 - 24 where it is stated that "The pre-cooked mixture may start with about 1.0 part wheat starch and about 1.0 part pre-gelatinized wheat starch...The pre-cooked mixture may also include about 2.0 parts of water having a temperature between about room temperature to about 212 degrees Fahrenheit, where the water is combined with the substantially homogenous mixture of wheat starch and pre-gelatinized wheat starch..." Applicants arguments are not being persuasive. It is not clear as to how the

"pre-cooked" as it exists can contain water at the recited temperature, since applicant does not recite that the mixture as claimed is at initial moment of production.

In regard to the remaining arguments, Applicants are referred to the Office action as cited above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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/Steve Weinstein/

Primary Examiner, Art Unit 1794